

REMARKS

Status of the Claims

With the entry of this amendment, the status of the claims will be as follows:

Claims **1-4, 6, 12, 34-48** and **51-54** remain withdrawn from consideration.

Claims **55, 58** and **59** are currently amended herein.

Claims **5, 7-11, 15-33, 49, 50, 56** and **57** are cancelled.

Claim **13** and **14** were previously presented and are unchanged.

Thus, the pending claims currently at issue are claims **13, 14, 55, 58** and **59**.

Support for the claim amendments is found in the specification. The claim amendments do not introduce new matter. These amendments are made without prejudice and are not to be construed as abandonment of the previously claimed subject matter or acquiescence to any objection or rejection of record. Applicants respectfully request entry of the Amendment and reconsideration of the application in light of the amendments and remarks herein.

Allowable Subject Matter

In the Office Action dated April 13, 2006, the Examiner indicated that claims **13** and **14** are allowable.

Claim Objections

The Examiner objected to claim **56** for allegedly being of improper dependent form.

Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the objection, and reserving the right to prosecute these or similar claims in the future, Applicants have cancelled claim **56**, rendering the objection moot.

Applicants respectfully request that this objection be withdrawn.

35 U.S.C. §112, First Paragraph

Claims **55(a), 56(a), 57(a)** and **59(a)** were rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim **55** to remove subparagraph **(a)** and cancelled claims **56** and **57**, thereby rendering the rejection moot. Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. §112, Second Paragraph

Claim 58 was rejected under 35 U.S.C. §112, second paragraph for allegedly insufficient antecedent basis for the limitation “6xHis tag.” Applicants respectfully disagree. Applicants note the Examiner’s recommended claim amendment. Solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim 58 according to the Examiner’s recommendation to incorporate the term “further” in describing the 6xHis tag in the claim. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claim 59 was rejected under 35 U.S.C. §112, second paragraph for allegedly insufficient antecedent basis for the limitation “fusion polypeptide.” Applicants respectfully disagree. Applicants note the Examiner’s recommended claim amendment. Solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim 59 according to the Examiner’s recommendation to more clearly describe the fusion molecules of the invention. Applicants respectfully request reconsideration and withdrawal of the rejection.

35 U.S.C. §102 Rejection Maintained

The rejection of claims 55 (a)(b)(c)(d) and 56 under 35 U.S.C. §102(b) as allegedly anticipated by Gray *et al.* (*Vet. Microbiol.*, 43:183-196 [1995]) was maintained by the Examiner. Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim 55 to remove subparagraphs (a), (b), (c) and (d) and cancelled claim 56, thereby rendering the rejection moot. Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. §102 Rejection on New Grounds

The Examiner rejected claims 55 (a) and 59 under 35 U.S.C. §102(b) as allegedly anticipated by US Patent No. 5,594,107 by Potter *et al.*, in light of US Patent Application Publication No. US2003/0118566 by Neuman and Levesque. Applicants are unclear of the statutory basis of this rejection. Applicants point out that Publication US2003/0118566 does not qualify as prior art to the present invention under 102(a), 102(b) or 102(e).

Regardless, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim 55 to remove subparagraph (a), thereby rendering the rejection moot. Applicants respectfully request reconsideration and withdrawal of the rejection.

The Examiner rejected claims **55(a)(b)(c)(d)** and **56** under 35 U.S.C. §102(b) as allegedly anticipated by Billson *et al.*, *Infection and Immunity* 68(6):3469-3474 (June 2000; exact release date unknown). Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim **55** to remove subparagraphs **(a)**, **(b)**, **(c)** and **(d)** and cancelled claim **56**, thereby rendering the rejection moot. Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected claims **55(b)(c)(d)** and **56** under 35 U.S.C. §102(b) as allegedly anticipated by Yamamoto *et al.*, *Infection and Immunity* 58(12):4106-4116 (1990). Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim **55** to remove subparagraphs **(b)**, **(c)** and **(d)** and cancelled claim **56**, thereby rendering the rejection moot. Applicants respectfully request that this rejection be withdrawn.

The Examiner rejected claims **55(a)(c)** and **56-59** under 35 U.S.C. §102(e) as allegedly anticipated by US Patent No. 6,180,112 by Highlander and Fedorova (effective filing date April 15, 1997). Applicants respectfully disagree. However, solely for the purpose of advancing the prosecution of the present application, without acquiescing to the rejection, and reserving the right to prosecute these or similar claims in the future, Applicants have amended claim **55** to remove subparagraphs **(a)** and **(c)** and cancelled claims **56** and **57**, thereby rendering the rejection moot. Applicants respectfully request that this rejection be withdrawn.

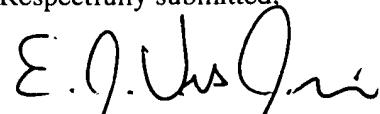
CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. Applicants note that when the pending claims are passed to allowance, the subparagraphs **(e)**, **(f)** and **(g)** in claims **55**, **58** and **59** will need to be relabeled. If the claims are deemed not to be in condition for allowance after consideration of this Response, the Examiner is encouraged to contact the Applicants by telephone (510-769-3502) to expedite the issuance of allowable subject matter in this case.

Appl. No. 09/884,696
Response to Office Action dated April 13, 2006

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Respectfully submitted,



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Attachments:

- 1) A petition to extend the period of response for **three** months;
- 2) A transmittal sheet;
- 3) A fee transmittal sheet;
- 4) A receipt indication postcard.